

AMENDED IN SENATE APRIL 8, 2003

SENATE BILL

No. 686

Introduced by Senator Ortiz

February 21, 2003

~~An act to amend Section 1417.1 of the Health and Safety Code, An~~
act to amend Sections 1417.2 and 1428 of the Health and Safety Code,
to amend Section 674.6 of, to add Section 674.8 to, and to add Chapter
5 (commencing with Section 11890) to Part 3 of Division 2 of, the
Insurance Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Ortiz. ~~Nursing homes~~ *Long-term health care facilities.*

Existing law provides for the licensure and regulation of health facilities, including long-term health care facilities, by the State Department of Health Services.

~~Existing law~~

The Long-Term Care, Health, Safety, and Security Act of 1973 provides for an inspection, reporting, and citation system for long-term health care facilities.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Existing law classifies a citation issued against long-term health care facilities according to the nature of the violation. Existing law provides that a licensee who desires to contest a citation is required to follow specified procedures.

This bill would require, when a citation is contested, except when judicial review is sought, the department to hear the appeal and, in

accordance with the decision, take one of specified actions within _____ months from the date when the appeal was requested.

Existing law requires that moneys collected as a result of civil penalties imposed against long-term health care facilities be deposited in the Health Facilities Citation Penalties Account in the Special Deposit Fund and prohibits the balance in the account from exceeding \$10,000,000. Moneys in the fund may be used by the department, upon appropriation by the Legislature, for specified purposes.

This bill would require the department to use those funds in the account that exceed an unspecified amount to implement the foregoing provisions of the bill.

Existing law requires an insurer to notify the Department of Insurance at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of commercial liability insurance.

This bill would require an insurer issuing policies of liability insurance to long-term health care facilities to notify the department at least 90 days prior to the date it intends to cease, withdraw, or substantially withdraw from offering liability policies to those facilities.

The bill would require each insurer authorized to write liability insurance for long-term health care facilities, by a date set by the commissioner but in any event no later than July 1 of each calendar year, to report to the commissioner specified information regarding policies for those facilities.

Existing law generally regulates the insurance industry.

This bill would allow the Insurance Commissioner to authorize the formation of a market assistance program, as specified, to assist in securing liability insurance for long-term health care facilities if the commissioner finds after a public hearing that the liability insurance is not readily available in the voluntary insurance market and that the public interest requires its availability.

The bill would also allow the commissioner to order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, for the purpose of providing, for a specified period, a market for liability insurance on a self-supporting basis, without subsidy from association members.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.



The people of the State of California do enact as follows:

~~SECTION 1. Section 1417.1 of the Health and Safety Code~~

SECTION 1. *Section 1417.2 of the Health and Safety Code is amended to read:*

1417.2. (a) Notwithstanding Section 1428, moneys collected as a result of civil penalties imposed under this chapter shall be deposited into an account which is hereby established in the Special Deposit Fund under the provisions of Section 16370 of the Government Code. This account is titled the Health Facilities Citation Penalties Account and shall, upon appropriation by the Legislature, be used for the protection of health or property of residents of long-term health care facilities, including, but not limited to, the following:

(1) Relocation expenses incurred by the state department, in the event of a facility closure.

(2) Maintenance of facility operation pending correction of deficiencies or closure, such as temporary management or receivership, in the event that the revenues of the facility are insufficient.

(3) Reimbursing residents for personal funds lost. In the event that the loss is a result of the actions of a long-term health care facility or its employees, the revenues of the facility shall first be used.

(4) The costs associated with informational meetings required under Section 1327.2.

(b) Notwithstanding subdivision (a), the balance in the Health Facilities Citation Penalties Account that exceeds _____ dollars (\$_____) shall be used by the department to implement paragraph (2) of subdivision (a) of Section 1428.

(c) The balance in the Health Facilities Citation Penalties Account shall not, at any time, exceed ten million dollars (\$10,000,000).

SEC. 2. *Section 1428 of the Health and Safety Code is amended to read:*

1428. (a) (1) If the licensee desires to contest a citation or the proposed assessment of a civil penalty therefor, the licensee shall use the processes described in subdivisions (b) and (c) for classes “AA,” “A,” or “B” citations.

1 (2) *Except where judicial review is sought, when a citation is*
2 *contested pursuant to this section, the department shall, within*
3 *_____ months from the date the appeal was requested, hear the*
4 *appeal and, in accordance with the decision, take one of the*
5 *following actions:*

6 (A) *Collect the penalty amount owed.*

7 (B) *Collect a lower amount.*

8 (C) *Dismiss the citation and the amount owed.*

9 (3) As a result of a citation review conference, a citation or the
10 proposed assessment of a civil penalty may be affirmed, modified,
11 or dismissed by the director or the director's designee. If the
12 director's designee affirms, modifies, or dismisses the citation or
13 proposed assessment of a civil penalty, he or she shall state with
14 particularity in writing his or her reasons for that action, and shall
15 immediately transmit a copy thereof to each party to the original
16 complaint. If the licensee desires to contest a decision made after
17 the citation review conference, the licensee shall inform the
18 director in writing within 15 business days after he or she receives
19 the decision by the director's designee.

20 (b) If a licensee notifies the director that he or she intends to
21 contest a class "AA" or a class "A" citation, the licensee may first,
22 within 15 business days after service of the citation, notify the
23 director in writing of his or her request for a citation review
24 conference. The licensee shall inform the director in writing,
25 within 15 business days of the service of the citation or the receipt
26 of the decision of the director's designee after the citation review
27 conference, of the licensee's intent to adjudicate the validity of the
28 citation in the superior court in the county in which the long-term
29 health care facility is located. In order to perfect a judicial appeal
30 of a contested citation, a licensee shall file a civil action in the
31 superior court in the county in which the long-term health care
32 facility is located. The action shall be filed no later than 90
33 calendar days after a licensee notifies the director that he or she
34 intends to contest the citation, or no later than 90 days after the
35 receipt of the decision by the director's designee after the citation
36 review conference, and served not later than 90 days after filing.
37 Notwithstanding any other provision of law, a licensee prosecuting
38 a judicial appeal shall file and serve an at-issue memorandum
39 pursuant to Rule 209 of the California Rules of Court within six
40 months after the state department files its answer in the appeal.

1 Notwithstanding subdivision (d), the court shall dismiss the appeal
2 upon motion of the state department if the at-issue memorandum
3 is not filed by the facility within the period specified. The court
4 may affirm, modify, or dismiss the citation, the level of the
5 citation, or the amount of the proposed assessment of the civil
6 penalty.

7 (c) If a licensee desires to contest a class “B” citation, the
8 licensee may request, within 15 business days after service of the
9 citation, a citation review conference, by writing the director or the
10 director’s designee of the licensee’s intent to appeal the citation
11 through the citation review conference. If the licensee wishes to
12 appeal the citation which has been upheld in a citation review
13 conference, the licensee shall, within 15 working days from the
14 date the citation review conference decision was rendered, notify
15 the director or the director’s designee that he or she wishes to
16 appeal the decision through the procedures set forth in Section
17 100171 or elects to submit the matter to binding arbitration in
18 accordance with subdivision (d). The administrative law judge
19 may affirm, modify, or dismiss the citation or the proposed
20 assessment of a civil penalty. The licensee may choose to have his
21 or her appeal heard by the administrative law judge or submit the
22 matter to binding arbitration without having first appealed the
23 decision to a citation review conference by notifying the director
24 in writing within 15 business days of the service of the citation.

25 (d) If a licensee is dissatisfied with the decision of the
26 administrative law judge, the licensee may, in lieu of seeking
27 judicial review of the decision as provided in Section 1094.5 of the
28 Code of Civil Procedure, elect to submit the matter to binding
29 arbitration by filing, within 60 days of its receipt of the decision,
30 a request for arbitration with the American Arbitration
31 Association. The parties shall agree upon an arbitrator designated
32 from the American Arbitration Association in accordance with the
33 association’s established rules and procedures. The arbitration
34 hearing shall be set within 45 days of the election to arbitrate, but
35 in no event less than 28 days from the date of selection of an
36 arbitrator. The arbitration hearing may be continued up to 15
37 additional days if necessary at the arbitrator’s discretion. Except
38 as otherwise specifically provided in this subdivision, the
39 arbitration hearing shall be conducted in accordance with the
40 American Arbitration Association’s established rules and

1 procedures. The arbitrator shall determine whether the licensee
2 violated the regulation or regulations cited by the department, and
3 whether the citation meets the criteria established in Sections 1423
4 and 1424. If the arbitrator determines that the licensee has violated
5 the regulation or regulations cited by the department, and that the
6 class of the citation should be upheld, the proposed assessment of
7 a civil penalty shall be affirmed, subject to the limitations
8 established in Section 1424. The licensee and the department shall
9 each bear its respective portion of the cost of arbitration. A
10 resident, or his or her designated representative, or both, entitled
11 to participate in the citation review conference pursuant to
12 subdivision (f), may make an oral or written statement regarding
13 the citation, at any arbitration hearing to which the matter has been
14 submitted after the citation review conference.

15 (e) If an appeal is prosecuted under this section, including an
16 appeal taken in accordance with Section 100171, the state
17 department shall have the burden of establishing by a
18 preponderance of the evidence that (1) the alleged violation did
19 occur, (2) the alleged violation met the criteria for the class of
20 citation alleged, and (3) the assessed penalty was appropriate. The
21 state department shall also have the burden of establishing by a
22 preponderance of the evidence that the assessment of a civil
23 penalty should be upheld. If a licensee fails to notify the director
24 in writing that he or she intends to contest the citation, or the
25 proposed assessment of a civil penalty therefor, or the decision
26 made by the director's designee, after a citation review conference,
27 within the time specified in this section, the decision by the
28 director's designee after a citation review conference shall be
29 deemed a final order of the state department and shall not be
30 subject to further administrative review, except that the licensee
31 may seek judicial relief from the time limits specified in this
32 section. If a licensee appeals a contested citation or the assessment
33 of a civil penalty, no civil penalty shall be due and payable unless
34 and until the appeal is terminated in favor of the state department.

35 (f) The director or the director's designee shall establish an
36 independent unit of trained citation review conference hearing
37 officers within the state department to conduct citation review
38 conferences. Citation review conference hearing officers shall be
39 directly responsible to the deputy director for licensing and
40 certification, and shall not be concurrently employed as

1 supervisors, district administrators, or regional administrators
2 with the licensing and certification division. Specific training shall
3 be provided to members of this unit on conducting an informal
4 conference, with emphasis on the regulatory and legal aspects of
5 long-term health care.

6 Where the state department issues a citation as a result of a
7 complaint or regular inspection visit, and a resident or residents are
8 specifically identified in a citation by name as being specifically
9 affected by the violation, then the following persons may attend
10 the citation review conference:

11 (1) The complainant and his or her designated representative.

12 (2) A personal health care provider, designated by the resident.

13 (3) A personal attorney.

14 (4) Any person representing the Office of the State Long-Term
15 Care Ombudsman, as referred to in subdivision (d) of Section 9701
16 of the Welfare and Institutions Code.

17 Where the state department determines that residents in the
18 facility were threatened by the cited violation but does not name
19 specific residents, any person representing the Office of the State
20 Long-Term Care Ombudsman, as referred to in subdivision (d) of
21 Section 9701 of the Welfare and Institutions Code, and a
22 representative of the residents or family council at the facility may
23 participate to represent all residents. In this case, these
24 representatives shall be the sole participants for the residents in the
25 conference. The residents or family council shall designate which
26 representative will participate.

27 The complainant, affected resident, and their designated
28 representatives shall be notified by the state department of the
29 conference and their right to participate. The director's designee
30 shall notify the complainant or his or her designated representative
31 and the affected resident or his or her designated representative, of
32 his or her determination based on the citation review conference.

33 (g) In assessing the civil penalty for a violation, all relevant
34 facts shall be considered, including, but not limited to, all of the
35 following:

36 (1) The probability and severity of the risk which the violation
37 presents to the patient's or resident's mental and physical
38 condition.

39 (2) The patient's or resident's medical condition.

1 (3) The patient's or resident's mental condition and his or her
2 history of mental disability.

3 (4) The good faith efforts exercised by the facility to prevent
4 the violation from occurring.

5 (5) The licensee's history of compliance with regulations.

6 (h) Except as otherwise provided in this subdivision, an
7 assessment of civil penalties for a class "A" or class "B" violation
8 shall be trebled and collected for a second and subsequent violation
9 for which a citation of the same class was issued within any
10 12-month period. Trebling shall occur only if the first citation
11 issued within the 12-month period was issued in the same class, a
12 civil penalty was assessed, and a plan of correction was submitted
13 for the previous same-class violation occurring within the period,
14 without regard to whether the action to enforce the previous
15 citation has become final. However, the increment to the civil
16 penalty required by this subdivision shall not be due and payable
17 unless and until the previous action has terminated in favor of the
18 state department.

19 If the class "B" citation is issued for a patient's rights violation,
20 as defined in subdivision ~~(e)~~ (e) of Section 1424, it shall not be
21 trebled unless the state department determines the violation has a
22 direct or immediate relationship to the health, safety, security, or
23 welfare of long-term health care facility residents.

24 (i) The director shall prescribe procedures for the issuance of
25 a notice of violation with respect to violations having only a
26 minimal relationship to safety or health.

27 (j) Actions brought under this chapter shall be set for trial at the
28 earliest possible date and shall take precedence on the court
29 calendar over all other cases except matters to which equal or
30 superior precedence is specifically granted by law. Times for
31 responsive pleading and for hearing the proceeding shall be set by
32 the judge of the court with the object of securing a decision as to
33 subject matters at the earliest possible time.

34 (k) If the citation is dismissed, the state department shall take
35 action immediately to ensure that the public records reflect in a
36 prominent manner that the citation was dismissed.

37 (l) Penalties paid on violations under this chapter shall be
38 applied against the state department's accounts to offset any costs
39 incurred by the state pursuant to this chapter. Any costs or penalties
40 assessed pursuant to this chapter shall be paid within 30 days of the

1 date the decision becomes final. If a facility does not comply with
2 this requirement, the state department shall withhold any payment
3 under the Medi-Cal program until the debt is satisfied. No payment
4 shall be withheld if the state department determines that it would
5 cause undue hardship to the facility or to patients or residents of
6 the facility.

7 (m) The amendments made to subdivisions (a) and (c) of this
8 section by Chapter 84 of the Statutes of 1988, to extend the number
9 of days allowed for the provision of notification to the director, do
10 not affect the right, that is also contained in those amendments, to
11 request judicial relief from these time limits.

12 SEC. 3. *Section 674.6 of the Insurance Code is amended to*
13 *read:*

14 674.6. (a) No insurer issuing policies of insurance subject to
15 Section 674.5 or 675 shall cease to offer any particular line of
16 coverage without prior notification to the commissioner.

17 (b) ~~An~~ Except as provided in Section 674.8, an insurer shall
18 notify the department at least 60 days prior to the date it intends
19 to withdraw wholly or substantially from a line of (1) commercial
20 liability insurance, (2) any insurance defined in Section 660 or 675
21 when coverage is provided by a separate rider or endorsement for
22 an activity for which the insured receives compensation, a stipend,
23 or remuneration of any kind for the activity and then only to the
24 extent of the coverage, (3) any other insurance defined in Section
25 660, or (4) any insurance issued to an individual or individuals
26 covering a risk not arising from a business or commercial activity.
27 Upon receipt of the notice, the commissioner may request and
28 review additional information, as deemed necessary, and
29 investigate the market conditions to determine whether that
30 insurance may become not readily available in the voluntary
31 insurance market as a result of the withdrawal.

32 (c) For purposes of this section, “intent to substantially
33 withdraw” means an insurer’s intent to nonrenew in excess of 50
34 percent of its current policyholders in the line of coverage upon
35 their next renewal.

36 (d) The commissioner shall adopt appropriate rules,
37 regulations, and standards for purposes of implementing this
38 section.

39 (e) Any insurer that has notified the commissioner pursuant to
40 subdivision (b) shall (1) notify the commissioner within 10 days

1 after the date given in the withdrawal notice if the insurer does not
2 in fact withdraw that line of insurance from the market, or (2)
3 notify the commissioner within 10 days after reentry if the insurer
4 reenters that line after the withdrawal.

5 *SEC. 4. Section 674.8 is added to the Insurance Code, to read:*

6 *674.8. (a) Notwithstanding subdivision (b) of Section 674.6,*
7 *an insurer issuing policies of liability insurance to long-term*
8 *health care facilities shall notify the department at least 90 days*
9 *prior to the date it intends to cease, withdraw, or substantially*
10 *withdraw from offering liability policies to those facilities.*

11 *(b) Each insurer authorized to write liability insurance for*
12 *long-term health care facilities shall, by a date to be set by the*
13 *commissioner, but in any event no later than July 1 of each*
14 *calendar year, report to the commissioner information specified by*
15 *him or her regarding liability policies for those facilities. The*
16 *information shall include, but not be limited to, the following:*

17 *(1) Whether the insurer is writing coverage for long-term*
18 *health care facilities, including new and renewal policies, and the*
19 *types of policies it is writing.*

20 *(2) The number of long-term health care facilities and beds*
21 *covered.*

22 *(3) The total amount of premiums from insureds, both received*
23 *and earned, during the immediately preceding calendar year.*

24 *(4) The number of claims outstanding, together with the*
25 *monetary amount reserved for loss and allocated loss expense for*
26 *the immediately preceding calendar year.*

27 *(5) The number of claims closed with payment during the*
28 *immediately preceding calendar year, the total monetary amount*
29 *paid thereon, reported by the year the claim occurred, and the total*
30 *allocated loss expense paid thereon, reported by the year the claim*
31 *occurred.*

32 *(6) The monetary amount paid on claims during the*
33 *immediately preceding calendar year to be reported separately by*
34 *the year the claim occurred, with allocated loss expense paid.*

35 *(7) The number of claims closed without payment during the*
36 *immediately preceding calendar year, by the year the claim*
37 *occurred, and the allocated loss expense paid thereon.*

38 *(8) The monetary amount reserved in the annual statement for*
39 *the immediately preceding calendar year for claims incurred but*
40 *not reported to the insurer.*

(9) *The number of lawsuits filed against the insureds in the immediately preceding calendar year.*

(c) *As used in this section, “long-term health care facility” has the same meaning as that term as defined in Section 1418 of the Health and Safety Code.*

SEC. 5. *Chapter 5 (commencing with Section 11890) is added to Part 3 of Division 2 of the Insurance Code, to read:*

CHAPTER 5. *MARKET ASSISTANCE PROGRAM FOR LONG TERM HEALTH CARE FACILITY LIABILITY INSURANCE*

11890. *As used in this chapter, “long-term health care facility” has the same meaning as that term as defined in Section 1418 of the Health and Safety Code.*

11891. *If the commissioner finds after a public hearing that liability insurance for long-term health care facilities is not readily available in the voluntary insurance market, and that the public interest requires this availability, the commissioner may authorize the formation of a market assistance program to assist in securing that insurance for long-term health care facilities. The commissioner may require insurers, agents, and brokers to attend public hearings and meetings concerning either the need for a market assistance program or the organization and formation of a program. The commissioner may also assist in securing insurance for long-term health care facilities for which commercial liability insurance is not readily available by forming a risk pooling arrangement as permitted by the Federal Liability Risk Retention Act of 1986.*

11892. (a) *The commissioner may order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, constituting a legal entity separate and distinct from all its members. The purpose of the association shall be to provide a market for liability insurance on a self-supporting basis, without subsidy from association members.*

(b) *If the commissioner determines after a public hearing that liability insurance for long-term health care facilities is readily available through the voluntary market, the association created pursuant to subdivision (a) shall cease its underwriting operations.*

1 ~~is amended to read:~~

2 ~~1417.1.— It is the intent of the Legislature in enacting this~~
3 ~~chapter to establish all of the following:~~

4 ~~(a) A citation system to impose prompt and effective civil~~
5 ~~sanctions against long-term health care facilities in violation of the~~
6 ~~laws and regulations of this state, and the federal laws and~~
7 ~~regulations as applicable to nursing facilities as defined in~~
8 ~~subdivision (k) of Section 1250, relating to patient care.~~

9 ~~(b) An inspection and reporting system to ensure that long-term~~
10 ~~health care facilities are in compliance with state statutes and~~
11 ~~regulations pertaining to patient care~~

12 ~~(c) A provisional licensing mechanism to ensure that full-term~~
13 ~~licenses are issued only to those long-term health care facilities~~
14 ~~that meet state standards relating to patient care.~~

